

(iii) The price of the tiers. A subscriber may not be charged for an NPT unless the cable operator has obtained the subscriber's affirmative consent. Changes to the fundamental nature of an NPT must be approved by subscribers in accordance with § 76.981.

(4) Operators may not require the subscription to any tier, other than a BST, as a condition for subscribing to an NPT and operators may not require subscription to an NPT as a condition for subscribing to a CPST. These restrictions will not apply to cable operators prior to October 5, 2002, if such operators lack the capacity to offer BSTs and NPTs without also providing other intermediate tiers of service as provided in § 76.900(c).

(c) Operators may offer the same service on NPTs as are on one or more BSTs or CPSTs. A channel that occupied a CPST or BST part-time on September 30, 1994 also may be offered full-time on an NPT as long as it continues to be offered at least part-time on CPST or BST, under substantially the same conditions as before it was offered on the NPT. If a channel occupies a BST or CPST (regulated pursuant to § 76.922) full-time on September 30, 1994, and is subsequently reduced to part-time on the BST or CPST, that channel may not be offered on an NPT full-time. Operators that offer a channel both on an NPT and a BST or CPST will have a continuing obligation to ensure that subscribers are aware that the channels are available on the CPST or BST.

(d) Operators may temporarily place new channels on CPSTs for marketing purposes and then move them to NPTs. In order for an operator to move a channel from a CPST to an NPT pursuant to this paragraph, the channel must not have been offered on a BST or CPST prior to October 1, 1994.

(e) After initially electing to offer an NPT, a cable operator may cease to provide the NPT, upon proper notice to subscribers pursuant to § 76.964. If an operator drops an NPT and subsequently determines to reestablish that tier, at the time of the reestablishment it must comply with the conditions for offering NPTs set forth in paragraph (b) of this section.

(f) If the Commission receives a complaint about an NPT, the operator need not file the rate justification provided in § 76.956, but shall within the time period provided by that rule file documentation that the NPT meets all the conditions set forth in this section.

(g) Within 30 days of the offering of an NPT, operators shall file with the Commission, a copy of the new rate card that contains the following information on their BSTs, CPSTs and NPTs:

(1) The names of the programming services contained on each tier; and

(2) The price of each tier. Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

[59 FR 62625, Dec. 6, 1994]

EFFECTIVE DATE NOTE: At 60 FR 62625, Dec. 6, 1994, § 76.987, was revised. Paragraph (g) contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart O—Competitive Access to Cable Programming

§ 76.1000 Definitions

As used in this subpart:

(a) *Area served by cable system.* The term "area served" by a cable system means an area actually passed by a cable system and which can be connected for a standard connection fee.

(b) *Attributable interest.* For purposes of determining whether a party has an "attributable interest" as used in this subpart, the definitions contained in the notes to § 76.501 shall be used, provided, however that:

(1) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(2) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term “buying group” or “agent,” for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Competing distributors.* The term “competing,” as used with respect to competing multichannel video programming distributors, means distributors whose actual or proposed service areas overlap.

(e) *Multichannel video programming distributor.* The term “multichannel video programming distributor” means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

NOTE TO PARAGRAPH (e): A video programming provider that provides more than one channel of video programming on an open video system is a multichannel video programming distributor for purposes of this subpart O and Section 76.1507.

(f) *Satellite broadcast programming.* The term “satellite broadcast programming” means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf

of and with the specific consent of the broadcaster.

(g) *Satellite broadcast programming vendor.* The term “satellite broadcast programming vendor” means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming.

(h) *Satellite cable programming.* The term “satellite cable programming” means video programming which is transmitted via satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers, except that such term does not include satellite broadcast programming.

NOTE TO PARAGRAPH (h): Satellite programming which is primarily intended for the direct receipt by open video system operators for their retransmission to open video system subscribers shall be included within the definition of satellite cable programming.

(i) *Satellite cable programming vendor.* The term “satellite cable programming vendor” means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

(j) *Similarly situated.* The term “similarly situated” means, for the purposes of evaluating alternative programming contracts offered by a defendant programming vendor, that an alternative multichannel video programming distributor has been identified by the defendant as being more properly compared to the complainant in order to determine whether a violation of § 76.1002(b) has occurred. The analysis of whether an alternative multichannel video programming distributor is properly comparable to the complainant includes consideration of, but is not limited to, such factors as whether the alternative multichannel video programming distributor operates within a geographic region proximate to the complainant, has roughly the same number of subscribers as the complainant, and purchases a similar service as the complainant. Such alternative multichannel video programming distributor, however, must use the same distribution technology as the “competing” distributor with whom the complainant seeks to compare itself.

(k) *Subdistribution agreement.* The term “subdistribution agreement” means an arrangement by which a local cable operator is given the right by a satellite cable programming vendor or satellite broadcast programming vendor to distribute the vendor’s programming to competing multichannel video programming distributors.

[58 FR 27670, May 11, 1993, as amended at 61 FR 28708, June 5, 1996]

§ 76.1001 Unfair practices generally.

No cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor shall engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

[58 FR 27671, May 11, 1993]

§ 76.1002 Specific unfair practices prohibited.

(a) *Undue or improper influence.* No cable operator that has an attributable interest in a satellite cable programming vendor or in a satellite broadcast programming vendor shall unduly or improperly influence the decision of such vendor to sell, or unduly or improperly influence such vendor’s prices, terms and conditions for the sale of, satellite cable programming or satellite broadcast programming to any unaffiliated multichannel video programming distributor.

(b) *Discrimination in prices, terms or conditions.* No satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor, shall discriminate in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between competing cable systems, competing cable operators, or any competing multichannel video programming distributors. Nothing in this subsection, however, shall preclude:

(1) The imposition of reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

NOTE 1: Vendors are permitted to create a distinct class or classes of service in pricing based on credit considerations or financial stability, although any such distinctions must be applied for reasons for other than a multichannel video programming distributor’s technology. Vendors are not permitted to manifest factors such as creditworthiness or financial stability in price differentials if such factors are already taken into account through different terms or conditions such as special credit requirements or payment guarantees.

NOTE 2: Vendors may establish price differentials based on factors related to offering of service, or difference related to the actual service exchanged between the vendor and the distributor, as manifested in standardly applied contract terms based on a distributor’s particular characteristics or willingness to provide secondary services that are reflected as a discount or surcharge in the programming service’s price. Such factors include, but are not limited to, penetration of programming to subscribers or to particular systems; retail price of programming to the consumer for pay services; amount and type of promotional or advertising services by a distributor; a distributor’s purchase of programming in a package or a la carte; channel position; importance of location for non-volume reasons; prepayment discounts; contract duration; date of purchase, especially purchase of service at launch; meeting competition at the distributor level; and other legitimate factors as standardly applied in a technology neutral fashion.

(2) The establishment of different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

NOTE: Vendors may base price differentials, in whole or in part, on differences in the cost of delivering a programming service to particular distributors, such as differences in costs, or additional costs, incurred for advertising expenses, copyright fees, customer service, and signal security. Vendors may base price differentials on cost differences that occur within a given technology as well as between technologies. A price differential for a program service may not be based on a distributor’s retail costs in delivering service to subscribers unless the program vendor can demonstrate that subscribers do not or